

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CRIMINAL APPEAL NO. 1024 OF 2001.

APPELLANT :-
(IN JAIL)

Brijmohan S/o. Jagdish Sahu,
aged about 18 years,
R/o. Village- Singarbhatta, P.S. Abhanpur,
District – Raipur (C.G.)

VERSUS

RESPONDENT :-

The State of Chhattisgarh.

**CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL
PROCEDURE 1973.**

HIGH COURT OF CHHATTISGARH : BILASPUR

Criminal Appeal No. 1024 of 2001

Single Bench:- Hon'ble Shri Justice Dharendra Mishra

Appellant :- Brájmohan Sahu

Vs.

Respondent :- The State of C.G.

Appellant by Shri Y.C.Sharma with Shri Vinod Lalchandani, Advocate.
State/respondent by Shri J.D.Bajpai, Govt. Advocate with Shri A.S.Kachhawaha, Panel Lawyer.

J U D G M E N T
(Delivered on 07/09/05)

The appellant has preferred this criminal appeal as he has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo RI for 10 years and fine of Rs. 500/-, in default of fine to further undergo RI for three months.

2. The case of the prosecution is that the appellant on 24.03.2001 at about 11.00 a.m. took prosecutrix namely Ku. Dhatri aged 3 ½ years while she was playing with one Vijendra and raped her in his thrashing field. The prosecutrix returned to her home weeping and on being asked, she said that the appellant has beaten her. However, when the mother of the prosecutrix (P.W. 21) took out her underwear, she found that blood was oozing from her private part. The prosecutrix informed her mother that the appellant took her in the thrashing field and committed wrong act with her after taking out her underwear. Deluram (P.W. 1)-father of the prosecutrix learned this when he returned home and Shiv Kumar (P.W. 9) servant of Deluram had seen the appellant taking the prosecutrix to the thrashing field. On being asked, the prosecutrix showed the place where she was taken by the appellant. The matter was reported to the Police Station-Abhanpur on the same date vide Ex.P/1. On the advice of the doctor of Primary Health Centre,

Abhanpur, the prosecutrix was also examined in the Medical College Hospital, Raipur. The bloodstained underwear of the prosecutrix was seized vide Ex.P/2 and the same was sent for examination to F.S.L., Raipur. The slide of the vaginal discharge was prepared. The prosecutrix was examined by the doctor and report of the doctor is Ex.P/4.

3. After investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Raipur and on committal learned trial court framed charge under Section 376 of the IPC. The appellant abjured his guilt and thereafter the prosecution examined Deluram Sahu, father of the prosecutrix-P.W.1, Smt. Rukmani Bai, mother of the prosecutrix-P.W.2, Ku. Dhatri-P.W. 3, Harish Kumar Chandrakar, Sarpanch-P.W. 4, Dr.Shantidevi Kanwar-P.W. 5, Ramnath Sahu-P.W. 6, Dr. J.C.Sharma-P.W.7, Dr. T.Nagariya-P.W. 8, Shivkumar-P.W.9, Nirbhay Singh-P.W. 10, and Court witness Vijendra-P.W. 11. After examination of the accused / appellant, Smt. Tejin Bai was examined as defence witness No. 1. The learned trial Court relying upon the statements of P.W. 1 Deluram Sahu, P.W. 2 Rukmani Bai, P.W. 3 Dhatri and P.W. 11 Virendra and further on the basis of the report of Ex.P/15 has convicted the appellant for the offence punishable under Section 376 of the IPC and sentenced him as above.
4. During pendency of the appeal, the appellant moved an application I.A.No. 415/2002 and whereby amendment in the memo of appeal has been prayed. This Court vide order dated 10.04.2002 had directed to post the above application along with the main appeal at the time of final hearing. By amendment the additional ground has been taken by the appellant that at the time of incident age of the appellant was more than 16 years but less than 18 years according to the mark-sheet of class Vth Board Examination in which date of birth of the appellant is shown as 05.05.1984.
5. Learned counsel for the appellant before arguing on the merits of the case has drawn attention of this Court towards the following facts;

- 1) that in the arrest memo, memo to the Executive Magistrate, memo to the Chief Medical Officer, Medical College, Raipur and also in the seizure memo which is Ex.P/13, the age of the appellant is shown as 17 years.
 - 2) that during trial on 13.06.2001 the appellant had moved an application for grant of bail before this High Court which was registered as M.Cr.C.No. 1325/2001 on the ground that appellant is 17 years old juvenile and in support of this contention, he had annexed the Mark-sheet of Vth Board Examination in which his date of birth is shown as 05.05.1984. However, this application was withdrawn with liberty to file the same before the trial Court and thereafter he moved an application before the trial court which was rejected and on that date also the age of the appellant was shown as 17 years approximately.
 - 3) That the trial Court in paragraph 24 of the judgment has held the age of the appellant to be 17 to 18 years and even then sentenced the appellant to undergo R.I. for 10 years in violation of the provisions of Juvenile Justice (Care and Protection of Children) Act (56 of 2000) (hereinafter referred to as 'the Act of 2000').
6. On the other hand, Shri J.D.Bajpai, learned Govt. Advocate fairly submits that the learned trial Court after considering the overall evidence on record has held the appellant to be 17 to 18 years of age and in the aforesaid circumstances as per provisions of Section 20 of the Act of 2000 instead of passing any sentence in respect of

juvenile, he ought to have forwarded the juvenile to the Board who alone could pass orders in respect of the juvenile as per provisions of the Act.

7. I have heard learned counsel for the parties.
8. Learned trial Court by the impugned judgment has tentatively held the appellant to be 17 to 18 years of age, even otherwise from the Vth Board Examination Mark-sheet of the appellant, his date of birth appears to be 05.05.1984 and as such on 01.04.2001 there was prima facie evidence that the appellant was less than 17 years old. Section 20 of the Act of 2000 is reproduced as under;

"20. Special provision in respect of pending cases:- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence."

9. The Hon'ble Apex Court in the matter of Pratap Singh Vs. State of Jharkhan reported in 2005 CRI. L. J. 3091 has held that provisions of 2000 Act would be applicable in a pending proceeding in any Court/authority initiated under the 1986 Act and is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 01.04.2001.
10. Thus in the instant case also though the Court below had arrived to the tentative conclusion in the impugned judgment that the appellant had not completed the age of 18 years on 01.04.2001, even then he has been sentenced by the learned Sessions Judge

without complying with the provisions of Section 20 of the Act of 2000.

11. On the basis of aforesaid discussion without adverting to the merits of the appeal, the jail sentence imposed by the learned A.S.J., Raipur by the impugned judgment is set aside and the matter is remitted to the Court of concerned A.S.J., Raipur for passing appropriate orders in the light of Section 20 and other provisions of the Act of 2000.

Sd/-
DHIRENDRA MISHRA
Judge